

### § 18.13

(10) Where applicable take any appropriate action authorized by the FRCP.

#### § 18.13 Settlement judge procedure.

(a) *How initiated.* The Office of Administrative Law Judges provides settlement judges to aid the parties in resolving the matter that is the subject of the controversy. Upon a joint request by the parties or upon referral by the judge when no party objects, the Chief Judge may appoint a settlement judge. A settlement judge will not be appointed when settlement proceedings would be inconsistent with a statute, regulation, or executive order.

(b) *Appointment.* The Chief Judge has discretion to appoint a settlement judge, who must be an active or retired judge. The settlement judge will not be appointed to hear and decide the case or approve the settlement without the parties' consent and the approval of the Chief Judge.

(c) *Duration of settlement proceeding.* Unless the Chief Judge directs otherwise, settlement negotiations under this section must be completed within 60 days from the date of the settlement judge's appointment. The settlement judge may request that the Chief Judge extend the appointment. The negotiations will be terminated if a party withdraws from participation, or if the settlement judge determines that further negotiations would be unproductive or inappropriate.

(d) *Powers of the settlement judge.* The settlement judge may convene settlement conferences; require the parties or their representatives to attend with full authority to settle any disputes; and impose other reasonable requirements to expedite an amicable resolution of the case.

(e) *Stay of proceedings before presiding judge.* The appointment of a settlement judge does not stay any aspect of the proceeding before the presiding judge. Any motion to stay must be directed to the presiding judge.

(f) *Settlement conferences.* Settlement conferences may be conducted by telephone, videoconference or in person at the discretion of the settlement judge after considering the nature of the case, location of the participants, availability of technology, and efficiency of administration.

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(g) *Confidentiality.* All discussions with the settlement judge are confidential; none may be recorded or transcribed. The settlement judge must not disclose any confidential communications made during settlement proceedings, except as required by statute, executive order, or court order. The settlement judge may not be subpoenaed or called as a witness in any hearing of the case or any subsequent administrative proceedings before the Department to testify to statements made or conduct during the settlement discussions.

(h) *Report.* The parties must promptly inform the presiding judge of the outcome of the settlement negotiations. If a settlement is reached, the parties must submit the required documents to the presiding judge within 14 days of the conclusion of settlement discussions unless the presiding judge orders otherwise.

(i) *Non-reviewable decisions.* Whether a settlement judge should be appointed, the selection of a particular settlement judge, and the termination of proceedings under this section are matters not subject to review by Department officials.

#### § 18.14 Ex parte communication.

The parties, their representatives, or other interested persons must not engage in ex parte communications on the merits of a case with the judge.

#### § 18.15 Substitution of administrative law judge.

(a) *Substitution during hearing.* If the judge is unable to complete a hearing, a successor judge designated pursuant to § 18.12 may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. The successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.

(b) *Substitution following hearing.* If the judge is unable to proceed after the hearing is concluded, the successor judge appointed pursuant to § 18.12 may issue a decision and order based upon the existing record after notifying the

parties and giving them an opportunity to respond. Within 14 days of receipt of the judge's notice, a party may file an objection to the judge issuing a decision based on the existing record. If no objection is filed, the objection is considered waived. Upon good cause shown, the judge may order supplemental proceedings.

#### § 18.16 Disqualification.

(a) *Disqualification on judge's initiative.* A judge must withdraw from a proceeding whenever he or she considers himself or herself disqualified.

(b) *Request for disqualification.* A party may file a motion to disqualify the judge. The motion must allege grounds for disqualification, and include any appropriate supporting affidavits, declarations or other documents. The presiding judge must rule on the motion in a written order that states the grounds for the ruling.

#### § 18.17 Legal assistance.

The Office of Administrative Law Judges does not appoint representatives, refer parties to representatives, or provide legal assistance.

#### PARTIES AND REPRESENTATIVES

#### § 18.20 Parties to a proceeding.

A party seeking original relief or action is designated a complainant, claimant or plaintiff, as appropriate. A party against whom relief or other action is sought is designated a respondent or defendant, as appropriate. When participating in a proceeding, the applicable Department of Labor's agency is a party or party-in-interest.

#### § 18.21 Party appearance and participation.

(a) *In general.* A party may appear and participate in the proceeding in person or through a representative.

(b) *Waiver of participation.* By filing notice with the judge, a party may waive the right to participate in the hearing or the entire proceeding. When all parties waive the right to participate in the hearing, the judge may issue a decision and order based on the pleadings, evidence, and briefs.

(c) *Failure to appear.* When a party has not waived the right to participate

in a hearing, conference or proceeding but fails to appear at a scheduled hearing or conference, the judge may, after notice and an opportunity to be heard, dismiss the proceeding or enter a decision and order without further proceedings if the party fails to establish good cause for its failure to appear.

#### § 18.22 Representatives.

(a) *Notice of appearance.* When first making an appearance, each representative must file a notice of appearance that indicates on whose behalf the appearance is made and the proceeding name and docket number. Any attorney representative must include in the notice of appearance the license registration number(s) assigned to the attorney.

(b) *Categories of representation; admission standards—*(1) *Attorney representative.* Under these rules, "attorney" or "attorney representative" means an individual who has been admitted to the bar of the highest court of a State, Commonwealth, or Territory of the United States, or the District of Columbia.

(i) *Attorney in good standing.* An attorney who is in good standing in his or her licensing jurisdiction may represent a party or subpoenaed witness before the Office of Administrative Law Judges. The filing of the Notice of Appearance required in paragraph (a) of this section constitutes an attestation that:

(A) The attorney is a member of a bar in good standing of the highest court of a State, Commonwealth, or Territory of the United States, or the District of Columbia where the attorney has been licensed to practice law; and

(B) No disciplinary proceeding is pending against the attorney in any jurisdiction where the attorney is licensed to practice law.

(ii) *Attorney not in good standing.* An attorney who is not in good standing in his or her licensing jurisdiction may not represent a party or subpoenaed witness before the Office of Administrative Law Judges, unless he or she obtains the judge's approval. Such an attorney must file a written statement that establishes why the failure to